

ORDINANCE NUMBER 2019-19

AN ORDINANCE TO ADOPT A NEW CHAPTER 8 OF THE CITY OF FRANKLIN MUNICIPAL CODE, PERTAINING TO PUBLIC GATHERING AND EXPRESSION EVENTS.

WHEREAS, the City of Franklin, Tennessee recognizes that protests, events, outdoor public assemblies, or other public gatherings are activities that are protected by the First Amendment to the United States Constitution; and

WHEREAS, the City of Franklin, Tennessee can adopt and enforce regulations of behavior that implicate First Amendment activity when the regulations only effect the time, place, and manner of expression, are content-neutral, are narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels of communication; and

WHEREAS, the City of Franklin, Tennessee has a significant interest in providing a safe and pleasant environment and in eliminating nuisance activity; and

WHEREAS, the City of Franklin, Tennessee has authority to issue permits for parades and other assemblies, but does not control the message of the speaker; and

WHEREAS, the City has a significant interest in ensuring the public safety and order and in promoting the free flow of pedestrian traffic in city parks, streets, sidewalks, and other public fora; and

WHEREAS, the Board of Mayor and Aldermen believes it is in the best interests of the City of Franklin, Tennessee to adopt this new chapter.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF FRANKLIN, TENNESSEE AS FOLLOWS:

SECTION I: That Title 16 of the City of Franklin Municipal Code is hereby amended to create a new Chapter 8 as follows:

Chapter 8. – PUBLIC GATHERINGS AND EXPRESSION EVENTS

Sec. 16-801. – Purpose and Intent.

This chapter establishes the standards for the issuance of a Permit for Public Gathering and Expression Events in the City of Franklin on public property. Its purpose is to promote public safety and welfare, to provide the City of Franklin with a minimum amount of time to logistically accommodate Public Gathering and Expression Events, to assure that the First Amendment rights of those who wish to peacefully participate in Public Gathering and Expression Events on City of Franklin public property are preserved and protected, and to assure reasonable access to public property by other community members not involved in the Event.

Sec. 16-802. – Definitions.

As used in this chapter, the following terms and phrases shall have the following definitions:

- (a) "Applicant" shall mean any person or organization who seeks a Public Gathering and Expression Event Permit to conduct or Sponsor an Event governed by this chapter.
- (b) "Public Gathering and Expression" means and denotes any political, civic, religious or other public activity intended primarily for the communication of ideas as opposed to the generation of monetary profit by the participants in or Sponsors of the Event, or the advertisement of products, goods or services. Fundraising and/or donations are permissible secondary objectives for a Public Gathering and Expressions Event. Events which require a street closure are subject to Title 16, Chapter 5.
- (c) "Permittee" shall mean any person or organization issued a Public Gathering and Expression Event Permit.
- (d) "Sponsor" shall mean any person who, or organization which, intends to conduct a public gathering and expression Event.
- (e) "Permit Officer" shall refer to the City Administrator or city employee designated by the City Administrator to act in his/her place.
- (f) "Permit" shall refer to a Public Gathering and Expressions Event Permit.
- (g) "Event" shall refer to a Public Gathering and Expression Event.

Sec. 16-803. – Public Gathering and Expression Event.

As used in this chapter a "Public Gathering and Expression Event" is a noncommercial public assembly, the primary purpose of which is the exercise of the participants' constitutional rights of free speech and assembly:

- (a) Which is scheduled to take place on public property; a city sidewalk, alley or other right-of-way; city park; and/or city facility; and/or
- (b) Which is likely to obstruct, delay or interfere with the normal flow of vehicular or pedestrian traffic; and/or
- (c) Which due to the crowd it generates, restricts access to or use of sidewalks, parks, beaches or other public areas; and/or
- (d) Which will result in the placement of structures or objects on streets or sidewalks exceeding twelve square feet in size or six feet in height; and/or
- (e) Which may result in donations for non-profit organizations; and/or
- (f) Which will have more than twenty-five (25) participants; and/or
- (g) Which may require additional temporary toilet and sanitary facilities if such facilities already available will be inadequate to meet the need created by Event participants; and/or
- (h) Which will be scheduled for longer than thirty (30) minutes; and/or
- (i) Displays and/or gatherings that are scheduled for longer than one day, which are scheduled overnight, or which require a street closure shall be governed by Title 16, Chapter 5; and/or
- (j) Rally and/or marches to be conducted on a city street rather than a city sidewalk require a street closure and are subject to the conditions of Title 16, Chapter 5.

Sec. 16-804. – Permit Required.

Any person or organization intending to conduct a Public Gathering and Expression Event in the City of Franklin shall first obtain a permit from the Permit Officer.

Sec. 16-805. – Exceptions.

A Permit is not required for the following Events:

- (a) A Public Gathering and Expression Event which in the estimation of the Permit Officer, and for which the Sponsor makes the following guarantees to the Permit Officer that the Event:
 - (1) Involves less than twenty-five (25) participants;
 - (2) Participants will assemble and/or march only on sidewalks;

- (3) Participants will cross streets only at crosswalks in units of twenty-five (25) or less allowing vehicles to pass between each unit;
- (4) Participants will obey all traffic controls and regulations;
- (5) Participants will not obstruct sidewalks or otherwise impede the orderly flow of foot traffic on sidewalks;
- (6) Participants will obey all applicable laws, statutes and ordinances;
- (7) Participants will not obstruct necessary maintenance and cleaning of streets, sidewalks, or other public facilities;
- (8) Adequate toilet and sanitary facilities are available. If in the estimation of the Permit Officer toilet or sanitary facilities will be inadequate to meet the need for such facilities created by Event participants, a Sponsor of the Event shall meet with the city department responsible for the public facility where the Event is to take place and reach an agreement for the provision of additional temporary toilet and sanitary facilities, or otherwise provide for adequate facilities.
- (9) Any signage used will not be of such a dimension or used in such a manner that such signage may impede or obstruct pedestrians on sidewalks or vehicles on streets.

Sec. 16-806. – Application.

Any person desiring to conduct an Event for which a Permit is required pursuant to this chapter shall register by filing a verified application with the Permit Officer on a form supplied by the City Administrator. All applications shall be submitted at least five (5) business days, but not more than six (6) months prior to the commencement date of the Event. The application time limits may be waived pursuant to Sec. 16-816.

Sec. 16-807. – Late Application.

Upon a showing of good cause, the City Administrator shall consider a late application if there is sufficient time to process and investigate the application and possible impact on city services for the Event. The Permit Officer shall make the determination of good cause and, in doing so, shall resolve all doubts in favor of allowing application to be made.

Sec. 16-808. – Contents of Application.

The Event Permit application may require the following information in addition to other information deemed necessary:

- (a) Name, address, home, mobile phone and business telephone numbers of the Applicant and the person who will be present and in charge of the Event (including cell phone number of person who will remain at Event);
- (b) If the Event is to be Sponsored by an organization, the name, address and telephone number of the organization and representative of the organization;
- (c) Nature or purpose of the Event;
- (d) Date and estimated starting and ending time of the Event;
- (e) Location of the Event, including its boundaries, and/or assembly and disbanding locations for walks/marches;
- (f) Estimated number of participants in the Event;
- (g) Type and estimated number of vehicles or structures which will be used at the Event and information as to whether there will be Sponsor-provided water or emergency aid stations at the Event;
- (h) Anticipated security and/or police requirements necessitated by the Event; and
- (i) Anticipated toilet and sanitary requirements necessitated by the Event;
- (j) Whether parking is requested to be restricted or prohibited during such closure;

- (k) Whether any sound amplification equipment is proposed to be used, and if so, information describing such sound amplification. No sound amplification equipment shall be used in any way contrary to the applicable city ordinance on sound amplification equipment, or contrary to the city ordinance on Offenses Against the Peace and Quiet (FMC 11-401 et. seq.);
- (l) Whether or not charity, gratuity, or offerings will be solicited or accepted, or sales of food, beverages, including alcohol or beer, or other merchandise will occur;
- (m) Whether any temporary street closure will occupy all or only a portion of the street or intersection involved; and
- (n) Such other information as the City Administrator deems reasonably necessary in order to carry out his/her duties under this chapter.

Sec. 16-809. – Additional Information Required for Public Gathering and Expression Events

occurring along a Planned Route, and/or entailing a march or a rally.

When the Event is a rally and/or march on city sidewalks, the application shall contain the following information:

- (a) The assembly point for the Event and the time when participants will begin to assemble;
- (b) The proposed sidewalk route to be traveled;
- (c) Material and maximum size of any signs or banners to be carried along the route; and
- (d) Anticipated number of adult monitors.

Sec. 16-810. – Action on Application.

The City's Permit Officer shall approve, preliminarily approve, or deny an Event application on the grounds specified in Sec. 16-817. Final approval may require City of Franklin Board of Mayor and Aldermen review and vote depending upon the Event's impact on public property, pedestrian traffic, vehicle traffic, and public safety. The Permit Officer may refer the application to the Board of Mayor and Aldermen for approval, preliminary approval or denial. Alternatively, the Board of Mayor and Aldermen may inform the Permit Officer of its intention to take final action on a particular Permit application. Permit applications in all cases are to be submitted to the Permit Officer. The Board of Mayor and Aldermen shall not accept applications.

Sec. 16-811. – Time for Action.

Action on the Permit application shall be expeditious and in no case later than five (5) business days after the Permit Officer receives a completed Event application form. The maximum five (5) business days action period may be extended by agreement between the Applicant and the Permit Officer. As used in this section the term "action" means approval, preliminary approval, denial of the Permit or referral of the application to the Board of Mayor and Aldermen pursuant to Sec. 16-810.

Sec. 16-812. - Consultation with Other Departments.

Prior to approving, preliminarily approving or denying the Permit application the city's Permit Officer shall consult with all city departments which may be impacted by the proposed Event.

Sec. 16-813. - Grounds for Denial or Conditions.

If the Permit Officer decides to deny or preliminarily approve the Permit application, the Permit Officer shall inform the Applicant in writing of the grounds for denial or the conditions of approval. The Permit Officer shall further inform the Applicant of his or her right to appeal. This information shall be provided at the time of the decision. If the Permit Officer relied on information about the Event other than that contained in the application, the Permit Officer

shall inform the Applicant of the additional information considered. In cases where the Board of Mayor and Aldermen rather than the Permit Officer acts on the application, the Board of Mayor and Aldermen shall cause this written information to be provided to the Applicant.

Sec. 16-814. - Notice of Intended Action.

(a) Prior to notifying the Permit Applicant of the action to be taken on the Applicant's Permit, the Permit Officer shall advise the impacted departments or divisions or their designees, as necessary, of the intended action.

(b) In cases where the Board of Mayor and Aldermen rather than the Permit Officer acts on the application, the Permit Officer shall immediately provide notification of that action to these individuals or their designees.

Sec. 16-815. – Denial of Late Application.

If the Permit Officer determines that good cause to consider a late application does not exist under Sect. 16-807, within two (2) business days of receipt of the late application, the Permit Officer shall inform the Applicant of the reason for the determination regarding lack of good cause and of the Applicant's right of appeal.

Sec. 16-816. – Expedited Action on Application.

The time limitations for action set forth in this chapter are not to be construed as absolute when time is of the essence. To that end, when it is apparent that the purpose of the demonstration would be frustrated if not conducted at or before a certain date and time, the Permit Officer, if possible, shall expedite the action required by this chapter so as to assure that the action is taken prior to the date and time of the proposed Event.

Sec. 16-817. – Grounds for Denial of Application for a Public Gathering and Expression Event Permit.

An Event Permit application may be denied only if it is determined from a consideration of the application and other pertinent information that one or more of the following circumstances exist:

- (a) The application was submitted less than five (5) days prior to the Event date;
- (b) Information contained in the application is found to be materially false or misleading;
- (c) The Applicant failed to complete the application form after having been notified of the need to do so;
- (d) The Permit Officer has already received an application for another Event at the same time and place as that requested by the Applicant, or is so close in time or proximity as to cause undue traffic congestion, and/or the police department or any other city department to be unable to meet the needs for services at both with the normal complement of staff;
- (e) The time, route, or size of the Event is likely to substantially interrupt the safe and orderly movement of traffic in the vicinity of the Event site or route, or to disrupt the use of a street at a time when it is usually subject to traffic congestion;
- (f) The concentration of persons, vehicles and/or structures at the site of the Event, or its assembly and disbanding areas, is reasonably likely to prevent proper police, fire, or ambulance service to areas in the vicinity of the Event.
- (g) Event participants did not comply with conditions imposed in connection with similar prior Events; and
- (h) The Event will conflict with an Event permitted under Title 16, Section 5.

In determining whether or not the Permit application should be granted or denied, the Permit Officer shall resolve all doubts in favor of granting the application.

Sec. 16-818. – Preliminary Approval.

When the grounds for denial of an application for a Permit can be obviated by altering the date, time, duration, route or location of the Event, the Permit Officer, instead of denying the application, shall preliminarily approve the application pursuant to Sec. 16-819. The city Permit Officer shall preliminarily approve a Permit application rather than deny the application whenever preliminary approval is possible. Depending upon the time, place, and manner of the Event, the Permit Officer may request the Applicant apply for a Permit under Title 16, Chapter 5.

Sec. 16-819. – Permit Conditions.

The Permit Officer may condition the issuance of a Permit by imposing reasonable requirements concerning the time, place, and manner of the Event, any other requirements which are necessary to protect the safety of persons and property, and to provide for adequate traffic control. Such conditions may include, but are not limited to the following:

- (a) Alteration of the date, time, duration, route or location of the Event;
- (b) When the Event is a march, conditions pertaining to:
 - (1) The area of participant assembly and disbanding;
 - (2) Conditions concerning accommodation of pedestrian or vehicular traffic, including restricting the Event to the sidewalk or designated public area, or allowing for intermittent safe traffic flow through an Event site.
- (c) Requirements for provision of first aid, sanitary or emergency facilities;
- (d) Requirements for use of Event monitors and method for providing notice of Permit conditions to Event participants;
- (e) Restrictions on the number or type of structures for fire safety as required by the City of Franklin Fire Department;
- (f) Requirements for use of garbage containers, cleanup and restoration of public property;
- (g) Reasonable restrictions on the use of amplified sound (as specified in the City's Offenses Against the Peace and Quiet (FMC 11-401 et. seq.));
- (h) Compliance with any other applicable ordinances or laws;
- (i) Restrictions on the service or sale of alcoholic beverages and any other edible or non-edible goods;
- (j) Requirements for security personnel to be present when deemed necessary; and
- (k) Requirement for the Applicant to provide advance written notification to those residents residing along the Event route or within the immediate vicinity of the Event, including notification of parking restrictions necessitated by the Event.

Sec. 16-820. – Permit Issuance.

The Event Permit shall be issued when:

- (a) The application has been approved;
- (b) The Applicant has agreed in writing to comply with the terms and conditions of the Permit; and;
- (c) All other applicable requirements of this chapter have been satisfied.

Sec. 16-821. – Appeal Procedure.

(a) To Board of Mayor and Aldermen. Except where the Board of Mayor and Aldermen has already acted on the application in question, an appeal shall be by a writ of certiorari to the chancery court.

The Board of Mayor and Aldermen's decision shall be final.

(b) To City Administrator. If there is insufficient time for a timely appeal to be heard by the Board of Mayor and Aldermen prior to the date on which the Event is scheduled, the Applicant may, at the Applicant's option, request that the executive assistant schedule the appeal before the City Administrator. The City Administrator shall hold a hearing no later than one (1) business day prior to the time the Event is scheduled to commence and will render a decision as soon as practicable and in no case later than the time the Event is scheduled to commence. The City Administrator's decision shall be final.

The time limitations set forth in subsection (b) of this section are not to be construed as absolute when time is of the essence. To that end, when it is apparent that the purpose of the Event would be frustrated if not conducted at a certain date and time, the City Administrator, if possible, shall expedite the appellate process so as to assure a ruling on the appeal prior to the date and time of the proposed Event.

Sec. 16-822. – Revocation by Permit Officer.

The Permit Officer may revoke a Permit at any time if:

- (a) An emergency arises making it impossible to assign sufficient or appropriate personnel to the Event so as to assure public safety; or
- (b) Information is obtained after the Permit is issued from which it may be reasonably concluded that the Permit should have been denied under Sec. 16-817.

Sec. 16-823. – Reasons for Revocation Stated.

If the Permit Officer revokes a Permit the Applicant shall be informed in writing of the grounds for revocation.

Sec. 16-824. – Appeal of Permit Revocation.

The Applicant may appeal a revocation in the manner provided for in Sec. 16-821 in all cases except where the revocation is based on an emergency and there is insufficient time available to present or schedule an appeal.

Sec. 16-825. – Revocation during Public Gathering and Expression Event.

The City Administrator, Chief of Police, Fire Chief or Fire Marshal, or their designees may revoke the Event Permit during the Event if he or she finds either:

- (a) That the Event has deviated from or will deviate from its approved route or area; or
- (b) Event participants are violation the City's Offenses Against the Peace and Quiet (FMC 11-401 et. seq.).
- (c) Event participants are violating the law or Permit conditions. City staff shall not revoke the Permit for either of these reasons unless the city staff first advises the participants of their route deviation, law violation or Permit condition violation and provides them with an opportunity to correct same.

Sec. 16-826. – Emergency Revocation.

The City Administrator, Chief of Police, Fire Chief or Fire Marshal, or their designees may revoke an Event Permit during the Event if fire or another emergency requires the Event to be terminated to assure public safety. When a Permit is revoked for this reason, all Event participants must immediately comply with the city staff instructions.

Sec. 16-827. Hold Harmless.

Applicants shall agree in writing to assume the defense of an indemnify and save harmless the city, its aldermen, boards, commissions, officers, employees and agents from all suits, actions,

damages or claims to which the city may be subjected of any kind or nature whatsoever resulting from, caused by, arising out of or as a consequence of this Permit and the activities permitted in connection therewith.

Sec. 16-828. – Compatibility with State and Federal Law and Constitutions.

It is the intention of the Board of Mayor and Aldermen that this chapter shall be interpreted in a manner compatible with the state of Tennessee Constitution and the United States Constitution and the statutory and decisional law of the state of Tennessee and the United States.

Sec. 16-829. – Violations.

- (a) It shall be an infraction for any person to conduct a Public Gathering and Expression Event, as defined, unless a Permit required under this chapter has been issued for the Event.
- (b) It shall be an infraction for any person to participate in a Public Gathering and Expression Event, as defined, with the knowledge that a Permit has not been issued for the Event.
- (c) It shall be an infraction for a Public Gathering and Expression Event Permittee to willfully violate the terms and conditions of the Event's Permit, or for any Event participant to knowingly and willfully violate the terms or conditions of the Permit.
- (d) It shall be an infraction for any person to hamper, interfere with, obstruct or impede any Public Gathering and Expression Event which has been permitted under this chapter.
- (e) When the Public Gathering and Expression Event Permitted is a march on sidewalks, it shall be an infraction to knowingly drive any vehicle, including bicycles and skateboards, between the persons participating in the march unless it is done at the direction of a police officer, or an authorized security person or monitor.
- (f) It shall be a misdemeanor for a Public Gathering and Expression Event participant to fail or refuse to comply with a revocation order made.

SECTION II. In the Event that any section, clause, provision, or part of this ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable shall remain in full force and effect. If any part of this ordinance is found to be invalid in any one or more of its several applications, all valid applications that are severable from the invalid applications shall remain in effect.

SECTION III: BE IT FINALLY ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE, that this Ordinance shall take effect 90 days from and after its passage on second and final reading, the health, safety and welfare of the citizens of Franklin, Tennessee requiring it.

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: _____
ERIC S. STUCKEY
City Administrator/Recorder

By: _____
DR. KEN MOORE
Mayor

Approved as to form by:

Shauna R. Billingsley

City Attorney

PASSED FIRST READING _____

PASSED SECOND READING _____